

## Overview of California's Conflict of Interest Law

**"Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided."**

Gov. Code Section 81002(c).

**"No public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest."**

Gov. Code Section 87100.

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The Political Reform Act prevents conflicts of interest in two ways -- disclosure and disqualification. (See Gov. Code Sections 87100-87350.)

### Disclosure

The purpose of financial disclosure is to alert public officials to personal interests that might be affected while they are performing their official duties, i.e., making governmental decisions. Disclosure also helps inform the public about potential conflicts of interest.

Public officials at every level of state and local government must disclose their personal financial interests. Elected officials, judges, and high-ranking appointed officials generally have the most comprehensive disclosure requirements. (Gov. Code Section 87200.) These include disclosure of:

- Investments in business entities (e.g., stock holdings, owning a business, a partnership)
- Interests in real estate (real property)
- Sources of personal income, including gifts and loans
- Positions of management or employment with business entities

For most other officials, including employees of state and local government agencies, it is up to the agencies that employ them to decide what their disclosure requirements are. Each state and local agency must adopt a conflict of interest code tailoring the disclosure requirements for each position within the agency to the types of governmental decisions a person holding that position would make. For example, an employee who approves contracts for goods or services purchased by her agency should not be required to disclose real estate interests, but should be required to disclose investments in and income from individuals and entities that supply equipment, materials, or services to the agency. (Gov. Code Sections 87301 and 87302.)

Unpaid members of boards and commissions and consultants to state and local government agencies also may be required to disclose their personal financial interests if they make or participate in making governmental decisions that could affect their private financial interests.

Disclosure is made on a form called a "statement of economic interests" (Form 700) which can be found in the Forms and Manuals section. The form must be filed each year. Filed forms are public documents that must be made available to anyone who requests them.

### Disqualification

If a public official has a conflict of interest, the official may be required to disqualify himself or herself from making or participating in a governmental decision, or using his or her official position to influence or attempt to influence a governmental decision.

To determine whether an official has a conflict of interest many factors must be analyzed. For example,

is it reasonably foreseeable that the official's interest will be affected by a particular decision? Will the decision have a significant monetary impact on the financial interest or is the impact minimal? Will the decision affect the official's interest differently than members of the general public? Is the official even making a governmental decision?

In many cases, an official will need guidance from the Commission or an attorney to determine whether disqualification is required.

Note: Although they are required to file statements of economic interests, judges and court commissioners are not subject to the Act's disqualification provisions.

### **Campaign Contributions**

In most cases, the receipt of campaign contributions is not the basis for disqualification by a public official. However, certain public officials who make decisions in proceedings involving licenses, permits, or other entitlements for use (e.g., planning commissioners, board members of joint powers authorities and other regional governing or planning agencies, and members of other state and local boards and commissions) are subject to the restrictions of Gov. Code Section 84308. Section 84308 prohibits solicitation or receipt of campaign contributions from parties, participants, or their agents, in proceedings involving licenses, permits, or other entitlements for use. The law also requires an official's disqualification in those proceedings if the official has received campaign contributions of \$250 or more from a party or participant within the 12 months preceding the decision. Finally, Section 84308 requires disclosure of such campaign contributions.

Elected state officers, judges, and members of local government agencies who are directly elected by the voters (e.g., board of supervisors, city council, school board) are exempt from Section 84308 when they are acting as members of the agency to which they are elected. However, if one of these individuals is also a voting member of another nonexempt body, such as a joint powers agency or regional planning agency, he or she is covered by the law with respect to license, permit or other entitlement for use proceedings before the nonexempt body. For example, if three city councilmembers and two county supervisors sit on a city-county joint powers authority, Section 84308 applies to the license, permit or other entitlement for use proceedings before the joint powers authority because they officials were not elected directly to the authority. It does not apply to the officials when they are voting on matters before the city council or board of supervisors.